

HUD decides to disclose business information over the objection of a submitter, HUD will send a written notice of intent to disclose to both the submitter and the requester. HUD will send these notices at least 10 working days before the specified disclosure date. The notices will include:

(1) A statement of the reasons why HUD rejected the submitter's disclosure objections;

(2) A description of the business information to be disclosed; and

(3) A disclosure date.

(g) *What other policies apply to a submitter?*

(1) *HUD notice of FOIA lawsuit.* HUD will promptly notify the submitter of any suit to compel HUD to disclose business information.

(2) *Determination of confidentiality.* HUD will not determine the validity of any request for confidentiality until HUD receives a request for disclosure of the information.

(3) *Current mailing address for the submitter.* Each submitter must give HUD a mailing address for receipt of any notices under this section, and must notify HUD of any change of address.

§ 15.109 How will HUD respond to a request for information from Form HUD-92410 (Statement of Profit and Loss)?

(a) *To whom will HUD disclose the information?* HUD will release information from Form HUD-92410 (or a HUD approved substitute form that the mortgagor may have submitted) only to eligible potential purchasers and only during the period specified by HUD for the mortgage sale.

(b) *Under what conditions will HUD release such information?* HUD will release the information only if all of the following three conditions are met:

(1) The information concerns a project that is subject to a HUD-held mortgage which HUD is selling under the authority of sections 207 (k) and (l) of the National Housing Act (12 U.S.C. 1713 (k) and (l)) or section 7(i)(3) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(i)(3)).

(2) The eligible potential purchasers have agreed to:

(i) Keep the information confidential;

(ii) Disclose the information only to potential investors in the mortgage

and only for the period specified by HUD for the mortgage sale and to notify those potential purchasers of their obligations under this section;

(iii) Use the information only to evaluate the mortgage in connection with the mortgage sale; and

(iv) To follow disclosure procedures for that sale that have been established by the Secretary.

(3) The potential investors in the mortgage have agreed to keep the information confidential and to use the information only to evaluate the mortgage in connection with their investment decision.

(c) *To whom may potential investors disclose such information?* Potential investors in the mortgage may disclose the information to other entities only if the disclosure is:

(1) Necessary for the investor's evaluation of the mortgage;

(2) Made in accordance with disclosure procedures for the specific sale that have been established by HUD; and

(3) Limited to the period specified by HUD for the mortgage sale.

(d) *What sanctions are available for improper disclosure of such information?* An eligible potential purchaser or a potential investor (who has received the information from a potential purchaser and has been notified by that entity of its obligations under paragraph (b) of this section), who discloses information from Form HUD-92410 in violation of this section, may be subject to sanctions under part 24 of this title.

§ 15.110 What fees will HUD charge?

(a) *How will HUD determine your fee?* HUD will determine your fee based on which category of requester you are in and on the other provisions of this section. With your request, you should submit information to help HUD determine the proper category. If HUD cannot tell from your request, or if HUD has reason to doubt the use to which the records will be put, HUD will ask you to provide additional information before assigning the request to a specific category.

(b) *What are the categories of requesters?* (1) *Commercial use requester.* You are a commercial use requester if you

§ 15.110

24 CFR Subtitle A (4-1-05 Edition)

request information for a use or purpose that furthers your commercial, trade, or profit interests or those interests of the person on whose behalf you have made the request. In determining whether your request properly belongs in this category, HUD determines the use to which you will put the documents requested.

(2) *Educational requester.* You are an educational requester if your request is on behalf of an educational institution and you do not seek the records for a commercial use, but to further scholarly research.

(3) *Non-commercial scientific requester.* You are a non-commercial scientific requester if you are not a commercial use requester and your request is on behalf of an organization that is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry.

(4) *Representative of the news media requester.* (i) You are a representative of the news media requester if you actively gather news for an entity that is primarily organized and operated to publish or broadcast news to the public.

(ii) Examples of news media entities include television or radio stations broadcasting to the public at large, and publishers of periodicals (but only in those instances when they can qualify as disseminators of news) who make their products available for purchase or subscription by the general public.

(iii) Freelance journalists may be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication through that organization, even though not actually employed by it. A publication contract would be the clearest proof, but HUD may also look to the past publication record of a requester in making this determination.

(iv) If you are a representative of the news media requester, HUD will not consider you to be a commercial use requester.

(5) *Other requester.* You are considered an "other" requester if you do not fall within the categories of requesters described in this paragraph (b).

(c) *FOIA Fee Schedule.* The following table sets out the Fee Schedule that HUD uses to determine your fee. The rates for professional and clerical search and review includes the salary of the employee performing the work. The duplication cost includes the cost of operating duplicating machinery. The computer run time includes the cost of operating a central processing unit for that portion of the operating time attributable to searching for responsive records, as well as the costs of operator/programmer salary apportionable to the search. HUD's fee schedule does not include overhead expenses such as costs of space and heating or lighting the facility in which the records are stored.

FOIA FEE SCHEDULE

Activity	Rate	Commercial use requester	News media, educational research, or scientific research requester	Other requester
(1) Professional search	\$37.00 per hour	Applies	Does not apply	Applies. No charge for first two hours of cumulative search time.
(2) Professional review	\$37.00 per hour	Applies	Does not apply	Does not apply.
(3) Clerical search	\$16.35 per hour	Applies	Does not apply	Applies. No charge for first two hours of cumulative search time.
(4) Clerical review	\$16.35 per hour	Applies	Does not apply	Does not apply.
(5) Programming services.	\$35.00 per hour	Applies	Does not apply	Applies.
(6) Computer run time (includes only main-frame search time not printing).	The direct cost of conducting the search.	Applies	Does not apply	Applies.
(7) Duplication costs	\$0.15 per page	Applies	Applies. No charge for first 100 pages.	Applies. No charge for first 100 pages.

FOIA FEE SCHEDULE—Continued

Activity	Rate	Commercial use requester	News media, educational research, or scientific research requester	Other requester
(8) Duplication costs—tape, CD ROM or diskette.	Actual Cost	Applies	Applies	Applies.

(d) *How does HUD assess review charges?* HUD will assess review charges only for the first time it analyzes the applicability of a specific exemption to a particular record or portion of a record. HUD will not charge for its review at the administrative appeal level of an exemption already applied. If HUD has withheld in full a record or portions of a record under an exemption which is subsequently determined not to apply, HUD will assess charges for its review to determine the applicability of other exemptions not previously considered.

(e) *How does HUD handle multiple requests?* If you, or others acting with you, make multiple requests at or about the same time for the purpose of dividing one request into a series of requests for the purpose of evading the assessment of fees, HUD will aggregate your requests for records. In no case will HUD give you more than the first two hours of search time, or more than the first 100 pages of duplication without charge.

(f) *Unsuccessful searches.* If HUD's search for records is unsuccessful, HUD will still bill you for the search.

(g) *No charge for costs under \$25.* HUD will not charge you a fee if the total amount calculated under this section is less than \$25.00.

(h) *Reducing fees in the public interest.* If HUD determines that disclosure of the information you seek is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government, and that you are not seeking the information for your own commercial interests, HUD may waive or reduce the fee.

(i) *When do I pay the fee?* HUD will bill you when it responds to your request. You must pay within thirty-one calendar days. If the fee is more than \$250.00 or you have a history of failing

to pay FOIA fees in a timely manner, HUD will ask you to remit the estimated amount and any past due charges before sending you the records.

(j) *What happens if I do not pay the fees?* (1) If you do not pay by the thirty-first day after the billing date, HUD will charge interest at the maximum rate allowed under 31 U.S.C. 3717.

(2) If you do not pay the amount due within ninety calendar days of the due date, HUD may notify consumer credit reporting agencies of your delinquency.

(3) If you owe fees for previous FOIA responses, HUD will not respond to further requests unless you pay the amount due.

(k) *Contract services.* HUD will contract with private sector sources to locate, reproduce and disseminate records in response to FOIA requests when that is the most efficient method. When doing so HUD will charge the cost to the requester that the private sector source has charged HUD for performing these tasks. In some instances, these costs may be higher than the charges HUD would ordinarily charge if the processing tasks had been done by the agency itself. In no case will HUD contract out responsibilities which the FOIA provides that HUD alone may discharge, such as determining the applicability of an exemption, or determining whether to waive or reduce fees. HUD will ensure that, when documents that would be responsive to a request are maintained for distribution by agencies operating statutory-based fee schedule programs such as the National Technical Information Service, HUD will inform requesters of the steps necessary to obtain records from those sources. Information provided routinely in the normal course of business will be provided at no charge.